

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

<div>MALIBU MEDIA, LLC, Plaintiff, v. JOHN DOE subscriber assigned IP address 173.64.119.92, Defendant.</div>	<div>Case No. 1:14-cv-0223-MJG Assigned to: Honorable Marvin J. Garbis United States District Judge</div>
<div>MALIBU MEDIA, LLC, Plaintiff, v. JOHN DOE subscriber assigned IP address 71.200.143.209, Defendant.</div>	<div>Case No. 1:14-cv-0257-RWT Assigned to: Honorable Roger W. Titus United States District Judge</div>
<div>MALIBU MEDIA, LLC, Plaintiff, v. JOHN DOE subscriber assigned IP address 74.103.54.222, Defendant.</div>	<div>Case No. 1:14-cv-0260-CCB Assigned to: Honorable Catherine C. Blake United States District Judge</div>
<div>MALIBU MEDIA, LLC, Plaintiff, v. JOHN DOE subscriber assigned IP address 76.100.228.15 Defendant.</div>	<div>Case No. 1:14-cv-0263-PWG Assigned to: Honorable Paul W. Grimm United States District Judge</div>

MALIBU MEDIA, LLC,
Plaintiff,

v.

JOHN DOE subscriber assigned IP address
98.204.121.246,
Defendant.

Case No. 1:14-cv-0660-GLR¹

Assigned to: Honorable George Levi Russell, III
United States District Judge

**ISP SUBSCRIBER'S MOTION TO LIFT THE TEMPORARY SEAL
ON THE DECLARATION OF GABRIEL QUEARRY AND EXHIBIT THERETO**

As part of John Doe's reply in support of his motion for an order to show cause as to why all evidence from Tobias Fieser and his company IPP should not be precluded and these cases dismissed ("**Motion For An OSC**") Doe submitted a declaration from an attorney named Gabriel Quearry, with an accompanying exhibit thereto. The Quearry Decl. further supports the linkage between IPP and Guardaley because the exhibit thereto shows how data that was supposedly being provided by IPP has certain characteristics suggesting that the data actually originated on the Guardaley system.

As Mr. Quearry explains in the declaration itself, and as Doe explained in the reply in support of the Motion For An OSC, Mr. Quearry does not believe that any of the information in his declaration or in the exhibit thereto is properly deemed confidential and that none of it is subject to protective order. Nevertheless, out of an abundance of caution, when Doe filed the Quearry Decl. and its exhibit in this case, Doe did so temporarily under seal. This was done to give Malibu an opportunity to weigh in on this issue, and possibly explain why it thinks the Quearry Decl. or the accompanying exhibit thereto should be deemed confidential, even though the propriety of such an argument seems doubtful.

¹ An identical version of this document is being filed concurrently in all cases identified on the caption.

Immediately after the Quearry Decl. was filed under seal, undersigned defense counsel Pietz emailed plaintiff's counsel Hoppe an un-redacted copy of the sealed document, explained that something should be filed promptly to resolve its status, and asked him to address whether he thought the information should remain sealed. Pietz Decl., Exh. 1. Shortly after the Quearry Decl. and related papers were filed, undersigned Lowe had a telephone conversation with plaintiff's counsel Hoppe in which he asked Mr. Hoppe about the sealing issue. Mr. Hoppe indicated that he had received Mr. Pietz's inquiry as to this subject, and did not yet have an answer. Pietz Decl., ¶ 4. On Tuesday June 10, 2014, undersigned defense counsel Pietz again emailed Mr. Hoppe to follow-up on this issue, noting that there had been no response, and stating that if no response was received by the end of the week (i.e., by Friday June 13th) we would file an application to unseal the information. Pietz Decl., Exh. 1. Neither Mr. Hoppe nor anyone else has responded (Pietz Decl., ¶ 6) accordingly, this motion followed.

"It is well settled that the public and press have a qualified right of access to judicial documents and records filed in civil and criminal proceedings." *Company Doe v. Public Citizen*, ___ F.3d ___ (4th Cir. April 16 2014)² at *36; *citing, inter alia, Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n.17 (1980). Doe is not seeking the sealing of the Quearry Decl. or its exhibit, per L.R. 105(11), rather, these documents were filed temporarily under seal in order to give Malibu the opportunity to file such a motion. The civil procedures manual for this district, which gives instructions for filing sealed documents per the updated CM/ECF system lends additional urgency, "**Unless there is already a Protective Order or an Order to Seal which allows this specific document to be sealed, you will be**

² Available on Fourth Circuit's website here: <http://pacer.ca4.uscourts.gov/opinion.pdf/122209.P.pdf>

required to file a Motion to Seal this document. The Motion to Seal must be filed *immediately* after filing the sealed document.” 1/10/11 Update to Civil Procedures Manual, p. 2 (emphasis in original).³

Here, there is no motion to seal or protective order in place, and despite having asked Malibu three times to address this issue over the last two weeks, and warning that this motion would be filed absent a response, it has declined to respond. Thus, for the foregoing reasons, Doe respectfully requests that the Declaration of Gabriel Quearry and accompanying exhibit thereto, which were previously filed here temporarily under seal by Doe, be unsealed and made publicly available on the docket.

Respectfully submitted,

DATED: June 16, 2014

THE PIETZ LAW FIRM

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³ Available on this Court’s website here: www.mdd.uscourts.gov/publications/forms/CivilUpdateDocument-2.pdf

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing paper with the Clerk of the Court using ECF, which will send notification of such filing to all attorneys of record.

/s/ Morgan E. Pietz

Morgan E. Pietz

DATED: June 16, 2014